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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 1975/43													
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/506,904	Filed Sep. 7, 2004													
	First Named Inventor Yehoshua Yeshurun														
	Art Unit 3763	Examiner Lu An H. Thanh													
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table border="0"><tr><td><input type="checkbox"/> applicant/inventor.</td><td rowspan="3"> Signature MARK H. FRIEDMAN Typed or printed name 301-9521011 Telephone number May 14, 2007 Date</td></tr><tr><td><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td></tr><tr><td><input checked="" type="checkbox"/> attorney or agent of record. Registration number 33,883</td></tr><tr><td><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td></td><td></td><td></td></tr><tr><td colspan="4"><p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p><p><input type="checkbox"/> *Total of _____ forms are submitted.</p></td></tr></table>				<input type="checkbox"/> applicant/inventor.	 Signature MARK H. FRIEDMAN Typed or printed name 301-9521011 Telephone number May 14, 2007 Date	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<input checked="" type="checkbox"/> attorney or agent of record. Registration number 33,883	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____				<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			
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This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:	§	
	§	
Yehoshua Yeshurun	§	
	§	
Serial No.: 10/506,904	§	
	§	
Filed: September 7, 2004	§	Group Art Unit: 3763
	§	
For: Devices and Methods for Transporting	§	Attorney
Fluid Across a Biological Barrier	§	Docket: 1975/43
	§	
Examiner: LoAn H. Thanh	§	

Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

LETTER ACCOMPANYING PRE-APPEAL BRIEF
REQUEST FOR REVIEW

Sir:

Applicant requests review of the Final Office Action mailed November 14, 2006. This letter is filed concurrently with a Notice of Appeal and form SB33 requesting pre-appeal brief review. As explained in detail below, the Applicant respectfully submits that the Examiner has made errors of fact and law in applying the prior art to the pending claims, and has failed to find all elements of the independent claims anticipated by the prior art. Accordingly, the application is not in condition for appeal and Applicant should be spared the time and expense associated with the preparation and filing of an appeal brief. Applicant further requests that the pending claims be allowed, or alternatively, that prosecution be reopened and an appropriate Office communication issued in due course.

Claims 1-25 are in this case. Claims 1-12 have been allowed. Claims 13-25 have been rejected under § 102(b) or § 103(a). Specifically, claims 14-18 have been rejected under § 103(a) over Gerstel in view of Tobinaga et al.

Rejections Based on Improper Reference

The rejections of claims 14-18 are based on a combination of references relying in part on Tobinaga et al. (US Patent Application Publication No. 2005/0065463). Tobinaga et al. was filed September 18, 2003, and first published on March 24, 2005. Thus the earliest date from which this reference can be applied is September 18, 2003, under § 102(e).

The present application was filed as International Patent Application No. PCT/IL03/00165 on March 4, 2003, more than six months earlier than the filing date of Tobinaga et al. As a result, the Tobinaga et al. reference is not applicable as prior art against the present invention, and the rejections of record of claims 14-18 are legally in error.

In view of this clear legal error in the Final Rejection, the Applicant respectfully submits that this case is not ripe for appeal.

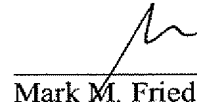
Status of Amendment After Final Rejection

Since claims 14-18 are not currently subject to any valid rejection, these claims are assumed to contain allowable subject matter and should have been designated by the Examiner as "objected to". In view of this fact, Applicant submitted on February 9, 2007, an amendment after Final Rejection rendering claim 14 into independent form (as amended claim 13). The claim language was further amended (narrowed) to address an issue of clarity raised orally by Examiner Paul Smith who was formerly responsible for this file.

In view of the corrected status of claim 14 as "objected to", Applicant believes that this amendment renders the claims in condition for allowance, conforming the claims to allowable subject matter. The Applicant therefore requests that the amendment be entered and the application allowed.

In the event that the claims are not found to be allowable for any reason, the Applicant believes it necessary that a further action be issued on the merits in which the status of claims 14-18 would be clarified.

Respectfully submitted,



Mark M. Friedman
Attorney for Applicant
Registration No. 33,883

Date: May 13, 2007